

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Reginald Tweed #16139, and)	
Jonathan Moses #16865,)	
)	
Plaintiffs,)	ORDER DECLINING TO ADOPT
)	REPORT AND RECOMMENDATION
vs.)	
)	
Leann Bertsch, Timothy Schuetzle,)	
Elaine Little, Robert Coad, Barb Gross,)	
Cordell Stromme, Patrick Branson,)	
Robert Heir, Steve Heidt, Steve Foster,)	
Parole Board, Classification Committee,)	Case No. 1:06-cv-032
Multi Disciplinary Committee,)	
North Dakota State Penitentiary,)	
)	
Respondent.)	

On or about April 19, 2006, petitioners Reginald Tweed and Jonathan Moses filed a pro se complaint with the Court pursuant to 42 U.S.C. § 1983. The Plaintiffs were granted leave to proceed in forma pauperis. See Docket No. 28. On April 28, 2006, Magistrate Judge Charles S. Miller, Jr. conducted an initial review of the complaint and concluded that the Plaintiffs had failed to allege sufficient facts on which a recognized legal claim could be based. Magistrate Miller allowed the additional time—until May 29, 2006—to file an amended complaint to rectify the deficiencies. See Docket No. 29.

On June 29, 2006, Magistrate Miller recommended dismissal of the complaint without prejudice due to a perceived failure on behalf of the Plaintiffs to file an amended complaint as requested. See Docket No. 9. On July 6, 2006, the Plaintiffs filed an objection to the report and recommendation on the grounds that an amended complaint had previously been filed with the Court. See Docket No. 10. The Plaintiffs filed an accompanying motion seeking PLRA review of the amended complaint. See Docket No. 11.

Although the specifics are not entirely clear, it appears that the Plaintiffs filed an amended complaint some time prior to May 29, 2006. See Docket No. 1, Ex. 6. What is clear, is that Magistrate Miller's recommendation of dismissal was predicated solely upon the perceived failure to file such an amendment. Thus, the Court declines to adopt the report and recommendation as written. (Docket No. 9). Instead, the **GRANTS** the Plaintiffs motion (Docket No. 11) and directs the Magistrate Judge to conduct a review under 28 U.S.C. § 1918A of the Plaintiffs' Amended Complaint and Exhibit "A."

IT IS SO ORDERED.

Dated this 10th day of July, 2006.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court